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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Competitive Telecommunications Association	)	RM No. 10131
	)	CCB/CPD 01-12
Petition for Rulemaking Regarding	)	
Presubscribed Interexchange Carrier Charges	)	

AT&T COMMENTS

Pursuant to the Commission's May 25 Public Notice in this proceeding,<sup>1</sup> AT&T submits these comments on the above-captioned petition by the Competitive Telecommunications Association ("CompTel") requesting the Commission to initiate a rulemaking on primary interexchange carrier ("PIC") change charges to require immediate reductions in the current rates of major incumbent local exchange carriers ("ILECs") to cost-based levels.

As CompTel persuasively demonstrates -- and as the Commission itself has previously acknowledged -- the \$5.00 PIC change charge that the Commission originally allowed ILECs to implement at the inception of its access charge regime was set without an examination of the relevant costs of providing that function, and that charge is far in excess of a cost-based rate in light of current methods and procedures for implementing PIC changes. The persistence of such non-cost based charges is facially at odds with the Commission's longstanding

<sup>1</sup> Public Notice, DA 01-1299, "CompTel files Petition for Rulemaking Re: Presubscribed Interexchange Carrier Charges," RM No. 10131, CCB/CPD 01-12 (released May 25, 2001)("May 25 Public Notice").

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commitment to cost-based access services and, as the Petition shows, imposes substantial unwarranted burdens on both end users and interexchange carriers (“IXCs”) that serve those subscribers.

Accordingly, the Commission should direct major ILECs to immediately refile tariffs for these charges at cost-based levels (which AT&T believes would be far lower even than the \$1.49 guideline suggested in the Petition). The Commission should also require similar cost-supported tariff refilings for other PIC change-related charges, such as the “PIC dispute” charges tariffed by major ILECs. Even with cost-based rates, however, the ILECs’ current administration of PIC change charges is rife with both incentives for anticompetitive conduct, and documented instances of such abuse, that should be addressed by the Commission as part of the instant rulemaking proceeding.

The current PIC change charge dates from the initial ILEC tariff filings at the time of the Bell System divestiture to implement the Commission’s access charge plan and the equal access process. The Commission concluded that, although a PIC change charge was lawful in principle, the rates proposed by the ILECs were excessive or inadequately supported.<sup>2</sup> In lieu of properly supported charges, the Commission permitted the ILECs to implement a \$5.00 change charge that would both allow the ILECs to recover their costs and discourage excessive

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<sup>2</sup> See Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Memorandum Opinion and Order, released April 27, 1984 (“1984 Access Charge Order”).

churn by customers among presubscribed IXC<sup>3</sup>. The Commission also investigated the next annual round of interstate tariff filings by the ILECs and again concluded that those carriers had failed adequately to justify proposed increases in their PIC change charges. The Commission therefore directed the ILECs to continue to apply the fixed \$5.00 rate to PIC changes.<sup>4</sup>

As CompTel shows, most major ILECs continue to assess the \$5.00 PIC change charge adopted pursuant to these Commission tariff review proceedings. Moreover, the Commission permitted the ILECs to assess that charge not only on customers that elected to change their selection of a presubscribed carrier, but also to impose those same charges directly on a submitting carrier that was unable to produce written authorization from a customer who had disputed a PIC change submitted by

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<sup>3</sup> Id., Appendix B, p. 13-5. As CompTel correctly points out (Petition, p. 7), whatever public policy justification might have existed in the early stages of the equal access process for limiting or deterring customer choice among presubscribed carriers, in the current intensely competitive inter- and intraLATA marketplaces and the emerging competitive local services market there can be no basis for continuing to inhibit such choices. The public policies underlying the Telecommunications Act of 1996 are intended to foster and expand customer choices among carriers without imposing artificial regulatory constraints on those selections.

<sup>4</sup> See Annual 1985 Access Tariff Filings, 2 FCC Rcd 1416, 1445-46 (1987) (“1987 Access Tariff Order”). When the Commission later adopted price cap regulation of the major ILECs, it excluded the PIC change charge from the application of the caps. That decision was based in part on the ground that these assessments “represent a direct charge to end users,” rather than on carriers, as well as on the fact that these non-cost based charges were “very different from the broader system of interstate access tariff offerings” to which productivity adjustments could be applied. See Policy and Rules Concerning Rates for Dominant Carriers, 5 FCC Rcd 6786, 6810 (1990), recon. 6 FCC Rcd 2637, 2715 (1991). For these reasons, the Commission held that PIC change charges “continue to be regulated under a traditional approach” based on the cost of those services. See 6 FCC Rcd at 2716.

the IXC.<sup>5</sup> And, as CompTel notes (Petition, p. 5), even where such changes are properly authorized by customers, it has become standard industry practice for IXCs to credit or otherwise reimburse new customers for the full amount of the related PIC change charge, thereby shifting that cost to the newly designated carriers who must recover them through rates assessed on their subscribers.

Even if the 1984 Access Charge Order or the 1987 Access Tariff Order had concluded that this charge was properly cost supported -- and as shown above the Commission did not make such a finding in either proceeding -- it is apparent that the \$5.00 rate is now clearly excessive in light of changes in technology and industry practice. Specifically, the Commission has long recognized that ILECs now employ automated electronic systems for processing PIC requests received through IXCs.<sup>6</sup>

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<sup>5</sup> See Illinois Citizens Utility Board Petition for Rulemaking, 2 FCC Rcd 1726, 1729 (1987)(“CUB Order”). Although the CUB Order was adopted with specific reference to the \$5.00 change charge, the Commission later permitted the ILECs to implement “unauthorized PIC change charges” that were many times larger than the admittedly non-cost based \$5.00 charge, with the avowed objective of deterring unauthorized conversions of customers’ presubscribed service providers. See, e.g., Bellsouth Tariff F.C.C. No. 4 (Transmittal No. 294), 5 FCC Rcd 2991 (1990)(implementing \$19.41 charge for business and residential phones); Ameritech Operating Companies Tariff F.C.C. No. 2 (Transmittal No. 478), 6 FCC Rcd 415 (1991)(\$23.00 charge); GTE Telephone Operating Companies Tariff F.C.C. No. 1 (Transmittal No. 640), 6 FCC Rcd 1894 (1991)(charges up to \$16.20); United Telephone System Companies Tariff F.C.C. No. 5 (Transmittal No. 272), 6 FCC Rcd 2312 (1991)(charges up to \$27.35).

<sup>6</sup> See Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, 11 FCC Rcd 21905, 22019 (1996)(noting that “under current industry practices, BOCs and interexchange carriers use electronic mechanisms to implement PIC changes”). CompTel’s Petition (p. 8) summarizes the interaction of IXCs and ILECs through the Customer Account Records Exchange (“CARE”) process

(footnote continued on following page)

As a result, the Commission concluded last year in response to a formal complaint filed by MCI that ILECs are now realizing “substantial cost savings” compared to the “extremely labor intensive” manual PIC processing procedures that were used by those carriers when the \$5.00 PIC change charge was originally implemented.<sup>7</sup>

Given these findings, and the Commission’s longstanding policy that access charges should be cost-based, there can be no further justification for allowing major ILECs to continue assessing the \$5.00 change charge upon customers or IXC’s. The Commission should therefore grant CompTel’s petition and promptly initiate a rulemaking proceeding in which the agency may collect information regarding the actual costs of implementing PIC changes using current automated systems and procedures.<sup>8</sup> With these data in hand, the Commission should then direct the major

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and ILEC operations support systems to implement PIC changes on a fully automated basis.

<sup>7</sup> MCI Telecommunications Corp. v. U S WEST Communications, Inc., 15 FCC Rcd 9328 (2000)(“MCI Complaint Order”)¶¶ 8-9. The MCI Complaint Order held that the Commission could not find the ILECs’ imposition of a \$5.00 change charge was unlawful in light of the Commission’s rulings in the 1984 Access Charge Order and the 1987 Access Tariff Order allowing those carriers to implement change charges up to that level. Nevertheless, the MCI Complaint Order recognized the likelihood that this rate “may well . . . no longer [be] appropriate in light of changes in the industry since that time.” Id., ¶ 14. CompTel is “taking up the Commission’s invitation” in the MCI Complaint Order to revisit the propriety of the \$5.00 change charge. Petition, p. 4.

<sup>8</sup> Until such current cost information is compiled by the Commission, AT&T believes that it would be premature for the Commission to propose any specific guideline for exempting ILECs from providing detailed cost support by ILECs for their proposed PIC change charge rates. For example, the \$1.49

(footnote continued on following page)

ILECs to refile their tariffs for these charges and to supply full cost support for those filings in accordance with Section 61.38 of the Commission's rules.<sup>9</sup> Like CompTel, AT&T believes that this procedure will significantly reduce the expenses that customers now incur in order to change their presubscribed carrier, as well as the adverse competitive marketplace impact on IXC's that may be called upon by customers to defray or absorb those transactional costs of a carrier change.

Similar benefits would accrue from the Commission extending the cost support requirement to other PIC-change related charges now assessed by the ILECs. For example, beginning in early 1993 the Commission allowed ILECs to implement optional "PIC switchback tariffs" that assess modified change charges on IXC's that elect not to contest customers' claims that they were changed to those carriers without authorization.<sup>10</sup> It is entirely reasonable to expect that intervening changes in ILEC systems and procedures have likewise significantly reduced the costs underlying these and other ILEC charges related to PIC changes. Reduction of these charges to cost-

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threshold for such tariff review suggested by CompTel (Petition, pp. 8-9) is based on the support provided with an ILEC tariff filed over eleven years ago. Intervening changes in industry systems and practices, as well as in the absolute volumes and "mix" of PICs submitted through automated versus manual means, have likely altered substantially the costs underlying such PIC changes.

<sup>9</sup> See 47 C.F.R. § 61.38.

<sup>10</sup> See, e.g., Bell Atlantic Telephone Companies Tariff FCC No. 1 (Transmittal Nos. 541 and 562), 8 FCC Rcd 2148 (1993).

based levels will produce pro-competitive benefits akin to those from mandating a cost-based PIC change charge.

But reduction of these charges to cost-based levels will not, standing alone, eliminate the serious potential for anticompetitive abuse and manipulation by that these charges present so long as the ILECs control the administration and implementation of the PIC change process. For example, after intraLATA presubscription was implemented in California in May, 1999, AT&T and other carriers began marketing those toll services to customers and succeeded in obtaining authorizations from many such subscribers to convert from Pacific Bell as their presubscribed intraLATA carrier. In numerous instances, Pacific Bell thereafter engaged in “winback” marketing to these same customers and convinced them to redesignate Pacific Bell as their intraLATA carrier.

However, instead of assessing the applicable charge on those customers for a voluntary carrier change, Pacific Bell assessed “PIC switchback” charges totaling nearly \$1 million on AT&T alone, under the pretext that these carrier changes were the result of slamming claims by the affected customers.<sup>11</sup> This strategem allowed Pacific Bell to avoid having to reimburse customers for their voluntary changes back to Pacific Bell (without which those subscribers might not have been willing to change their intraLATA service to the ILEC), and to burden its

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<sup>11</sup> See Complaint in AT&T Communications of California, Inc. v. Pacific Bell, et al., Case No. 99-12-029 (Cal. PUC 1999).

competitor AT&T with the charges for those carrier changes.<sup>12</sup> Simply reducing the carrier change charge to lower levels would not obviate the potential for such blatantly anti-competitive conduct as that described above. Thus, the Commission should expand the scope of the rulemaking requested by CompTel to determine methods of reducing or eliminating ILEC abuse of PIC change charges, including, but not limited to, adopting neutral third party administration of the carrier change process, as AT&T has previously advocated.<sup>13</sup>

### CONCLUSION

For the reasons stated above, the Commission should promptly initiate a rulemaking to reduce major ILEC's PIC change charges immediately to cost-based levels, and to preclude those carriers from applying even cost-based charges in a discriminatory and anticompetitive manner.

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<sup>12</sup> Similarly, this past March Verizon filed a local exchange service tariff with the Texas Public Utilities Commission ("PUC"), under which the alleged unauthorized carrier would be billed a nonrecurring charge after a slamming complaint had been registered, but prior to any determination of its validity. Where the slamming claim was later found invalid, the accused carrier was left to obtain reimbursement by rebilling the end user, who in the interim would already have been switched to another carrier – i.e., Verizon. The PUC staff has recently recommended rejection of the Verizon tariff because it placed the financial burden on the exonerated carrier, absent rebilling of the customer by that carrier. The PUC staff concluded "it is apparent . . . that this would create confusion for the companies and customers, and might result in excessive costs to an innocent carrier for the recovery of these charges." See Memorandum dated June 7, 2001 to Policy Development Division, Texas PUC, re Tariff No. 23813.

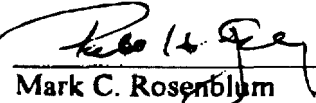
<sup>13</sup> See, e.g., AT&T Comments, filed March 18, 1999, and AT&T Reply Comments, filed May 3, 1999, in Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Changes of Consumers Long Distance Carriers, CC Docket No. 94-129.



Respectfully submitted,

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June 18, 2001

**CERTIFICATE OF SERVICE**

I, Theresa Donatiello Neidich, do hereby certify that on this 18th day of June, 2001 a copy of the foregoing "AT&T Comments" was served by US first class mail, postage prepaid, on the parties named below.

  
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